

# Strategy Research Project

## Targeted Killings

by

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Class of 2013

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REPORT DOCUMENTATION PAGE				Form Approved OMB No. 0704-0188	
<p>The public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports (0704-0188), 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number. <b>PLEASE DO NOT RETURN YOUR FORM TO THE ABOVE ADDRESS.</b></p>					
1. REPORT DATE (DD-MM-YYYY) xx-03-2013		2. REPORT TYPE STRATEGY RESEARCH PROJECT		3. DATES COVERED (From - To)	
4. TITLE AND SUBTITLE Targeted Killings				5a. CONTRACT NUMBER	
				5b. GRANT NUMBER	
				5c. PROGRAM ELEMENT NUMBER	
6. AUTHOR(S) Colonel Louis A. Zeisman United States Army				5d. PROJECT NUMBER	
				5e. TASK NUMBER	
				5f. WORK UNIT NUMBER	
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) Colonel Gregory M. Martin Department of Command, Leadership, and Management				8. PERFORMING ORGANIZATION REPORT NUMBER	
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES) U.S. Army War College 122 Forbes Avenue Carlisle, PA 17013				10. SPONSOR/MONITOR'S ACRONYM(S)	
				11. SPONSOR/MONITOR'S REPORT NUMBER(S)	
12. DISTRIBUTION / AVAILABILITY STATEMENT Distribution A: Approved for Public Release. Distribution is Unlimited.					
13. SUPPLEMENTARY NOTES Word Count: 5803					
14. ABSTRACT <p>This paper discusses the highly debated use of Remotely Piloted Vehicles (RPV) in response to the Al-Qaeda threat. The United States has the technology to target Al-Qaeda locations and eliminate the threat using RPVs, but current moral and legal debates stand in the way. This paper provides a historical summary of the Al-Qaeda threat as well as details about events following the 9/11 attack that launched the United States into armed conflict with Al-Qaeda. The paper defines "targeted killing" to set the stage for the legal policy discussion. It defines the legal status as unlawful combatants. The paper applies the three principles of the Law of Armed Conflict (LOAC) to address frequently debated legal considerations and the Feasible, Acceptable, Suitable (FAS) test is used to confront the moral debate. Both analyses clearly support the use of RPVs against Al-Qaeda targets. It concludes with several recommendations to enhance the capabilities and situational awareness of this program so that the United States can continue to use the RPV as a tool to destroy Al-Qaeda in the future.</p>					
15. SUBJECT TERMS Remotely Piloted Vehicles, Drones, Al-Qaeda					
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT  UU	18. NUMBER OF PAGES  32	19a. NAME OF RESPONSIBLE PERSON
a. REPORT UU	b. ABSTRACT UU	c. THIS PAGE UU			19b. TELEPHONE NUMBER (Include area code)



# USAWC STRATEGY RESEARCH PROJECT

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## **Abstract**

Title: Targeted Killings  
Report Date: March 2013  
Page Count: 32  
Word Count: 5803  
Key Terms: Remotely Piloted Vehicles, Drones, Al-Qaeda  
Classification: Unclassified

This paper discusses the highly debated use of Remotely Piloted Vehicles (RPV) in response to the Al-Qaeda threat. The United States has the technology to target Al-Qaeda locations and eliminate the threat using RPVs, but current moral and legal debates stand in the way. This paper provides a historical summary of the Al-Qaeda threat as well as details about events following the 9/11 attack that launched the United States into armed conflict with Al-Qaeda. The paper defines “targeted killing” to set the stage for the legal policy discussion. It defines the legal status as unlawful combatants. The paper applies the three principles of the Law of Armed Conflict (LOAC) to address frequently debated legal considerations and the Feasible, Acceptable, Suitable (FAS) test is used to confront the moral debate. Both analyses clearly support the use of RPVs against Al-Qaeda targets. It concludes with several recommendations to enhance the capabilities and situational awareness of this program so that the United States can continue to use the RPV as a tool to destroy Al-Qaeda in the future.





## **Targeted Killings**

The war on terror will not be won on the defensive. We must take the battle to the enemy, disrupt his plans, and confront the worst threats before they emerge. In the world we have entered, the only path to safety is the path of action. And this nation will act.

—President George W. Bush  
June 1, 2002<sup>1</sup>

In September of 2001, Al-Qaeda demonstrated it was at war with the United States by murdering close to 3,000 American citizens. Over the last decade, this global threat has infiltrated multiple states to gain sanctuaries from which to plan future attacks. Using the new technology of armed Remotely Piloted Vehicles (RPV), the United States now has the capability, not only to pressure, but to destroy Al-Qaeda leadership through targeted killings. As the United States draws down forces in Afghanistan, technology continues to improve and the American endurance for large scale ground combat decreases, the use of Remotely Piloted Vehicles will likely remain a necessary means of destroying Al-Qaeda leadership and impeding its conduct effective offensive operations.<sup>2</sup>

This method, however, is not without its detractors. This paper argues the common objections to targeted killing are ill founded. There are certain policy steps the United States can and should take to ensure the continued legitimacy of the approach. This paper begins by defining targeted killing. This sets the stage for the legal policy discussion on why the United States and the international community about whether this type of warfare is justified. Next, the paper discusses the distinct difference between targeted killing and assassinations, with a transition to the moral aspects of targeting killing. The paper then applies the Feasible, Acceptable, Suitable (FAS) test to examine

if RPV strikes should be an option for future use. Finally, the paper will conclude with the proposed way ahead and policy recommendations.

The September 11, 2001 attack on American soil changed lives forever, as well as the way the United States will be required to fight future conflicts. Nineteen militants associated with the Islamic group Al-Qaeda (AQI) hijacked four U.S. airliners and carried out the largest attack on American territory in history. Two aircraft torpedoed into the Twin Towers in New York City at speeds of over 490mph killing 2,595 people. Shortly thereafter, another aircraft smashed into the Pentagon killing 125 civilian and military personnel. The last hijacked aircraft, United Flight 93, crashed into a field in Shanksville, PA, killing all 41 passengers aboard.<sup>3</sup> The mastermind and leader behind the attack was Osama bin Laden, commander of Al-Qaeda located in Afghanistan.

#### The Al-Qaeda Threat

To fully understand the RPV or drone program against Al-Qaeda it is important to understand the background of Al-Qaeda and how the United States defines this global threat. In 1979, the Soviet government sent military units into Afghanistan in an attempt to stabilize the country under Moscow's influence. Muslims from around the world rallied in Afghanistan to fight off the Russian army in what was seen as a holy war. A twenty-three year old, six foot-five inch tall Saudi named Osama Bin Laden arrived in Afghanistan in 1980. Although he picked up arms on occasions, he was primarily known as a financier who funded the anti-Soviet jihad. The first victory for this jihad was in 1988 when Moscow announced the intended withdrawal of its forces from Afghanistan. Nearly a decade of fighting gave the mujahedeen or holy warriors a training field to polish, recruit and work on constructing the movement. Osama Bin Laden was determined and would not allow this movement to dissolve. Bin Laden and

his right hand man Ayman al-Zawahiri continued for years to gain respect and stature among the Islamic community. The base or foundation (Al-Qaeda in Arabic) was formed as a potential headquarters for future jihad.<sup>4</sup>

The Saudi government expelled Bin Laden from the kingdom following the Iraqi invasion of Kuwait in 1990. This forced him to move to Sudan. The first known Al-Qaeda terrorist attack was December 29, 1992. A car bomb was detonated at a hotel in Yemen killing one tourist. The bomb was intended to kill U.S. troops who had been deployed to Somalia on a humanitarian mission.<sup>5</sup> Sixty days later, on February 23, 1993 Al-Qaeda's first attack on American soil was carried out. A car bomb exploded in the World Trade Center in New York City, killing a half-dozen people and wounding over a thousand. Over the next three years Al-Qaeda continued to conduct multiple terrorist attacks and assassinations, claiming responsibility for the deaths of hundreds of Americans.

On August 23, 1996 Osama Bin Laden issued his first Declaration of War against the Americans "occupying the land of the Two Holy Mosques." On February 23, 1998 he issued his second fatwa providing instructions to Muslims everywhere:

The ruling to kill the Americans and their allies—civilians and military—is an individual duty for every Muslim who can do it in any country in which it is possible to do it...[E]very Muslim who believes in God and wishes to be rewarded to comply with God's order to kill the Americans and plunder their money wherever and whenever they find it.<sup>6</sup>

Another five years passed with multiple escalating terrorist attacks on Americans, which included the attack on the USS Cole in Yemen on October 5, 2000. A small boat, loaded with explosives, was traveling at a high rate of speed, barreling toward the coast of Yemen when it hit the billion dollar destroyer docked for refueling. It ripped a 60-by-40 foot hole in the ship's hull, trapping the bodies of many of the dead

crew members in the wreckage.<sup>7</sup> Seventeen U.S. Sailors were killed and 38 wounded. The United States was attacked by Al-Qaeda in September, 2001 when Osama bin Laden executed his most incredible attack killing close to 3,000 people. President Bush announced to the world that, “U.S. troops will hunt down terrorists and smoke them out of their holes in a long unrelenting war.”<sup>8</sup>

### Targeted Killing

Targeted killing through the use of Remotely Piloted Vehicles (RPV) is one technique used by the United States to destroy Al-Qaeda operatives. There has been considerable controversy over this tactic in the ongoing fight against terrorism. Some domestic and international leaders view targeted killing as a surgically precise and effective tactic to combat terrorism around the globe, while others believe this type of warfare is illegal, immoral and ineffective.

There are numerous characterizations that define targeted killings but none are universally recognized under international law. A United Nations special report on the topic defines targeted killings as “premeditated acts of lethal force employed by states in times of peace or during armed conflict to eliminate specific individuals outside their custody.”<sup>9</sup> Another well recognized definition, and the one adopted in this paper, is “the intentional killing of a specific civilian or unlawful combatant who cannot reasonably be apprehended, who is taking a direct part in hostilities, the targeting done at the direction of the state, in the context of an international or non-international conflict.”<sup>10</sup>

### Can the United States Legally Go to “War” With Al-Qaeda?

The first question to ask is “Can the U.S. legally go to “war” with Al-Qaeda outside a theater of real war, and if the answer is no, then what makes them a legal target?” Under international law, it is very clear that Al-Qaeda is not a state, nation,

insurgent group, or belligerent. Under customary international law “an insurgency is the lowest level of warfare or armed conflict otherwise known as an armed conflict not of an international character.”<sup>11</sup> Traditional legal criteria used to determine whether an insurgent group is valid must meet four criteria. “Insurgents must represent an identifiable group of people or to have a relatively stable base of support within a given population; have the semblance of a government; have an organized military force and be able to field its military units in sustained hostilities; and control significant portions of territory as it own.”<sup>12</sup> Al-Qaeda does not meet any of the elements of the traditional legal criteria. They do not have a base of support within a given population and they do not control significant terrain. They definitely do not run the organization as a government and never had the capability to field military units in sustained hostilities. Therefore, the United States cannot be at “war” with Al-Qaeda but that does not mean the United States cannot be in a legal armed conflict with them. Following the attacks in September, 2001, the United States considered themselves in armed conflict with Al-Qaeda to which the Geneva Conventions were applicable.<sup>13</sup>

#### How is Al-Qaeda Legally Identified by Law?

How does the United States and the international community classify Al-Qaeda, and can they be made a legal target? During armed conflicts in the past, international law only recognized two groups of people: combatants and civilians. Combatants are the easiest category to define, as they are uniformed individuals who are part of the armed forces of that state and have the right to participate in the conflict. If they are not labeled combatants, then they fall into the category of civilian. Civilians do not directly take part in combat operations and are not permitted by any law to be targeted. As a matter of “fighting well” a state should take all appropriate measures to ensure the

safety of civilians during all combat operations, and make every effort to limit civilian deaths and collateral damage.

The introduction of non-state actors and terrorist organizations resulted in the formation of another category. The “unlawful combatants” category was recently recognized within the international community. This category is defined as individuals who are not part of state armed forces, who participate in combat activities in civilian clothes, making them indistinguishable from the non-combatant civilian population. Al-Qaeda and other non-state actors fall into this category. “Unlawful combatants are either combatants who fail to follow the laws of war or civilians who take part directly in hostilities without being entitled to do so.”<sup>14</sup> According to the Law of International Armed Conflict, “A person is not allowed to wear two hats simultaneously: that of a civilian and the helmet of a soldier. Therefore, a person who engages in military raids by night while purporting to be an innocent civilian by day is neither a combatant nor civilian.”<sup>15</sup> Al-Qaeda meets these criteria, as they are unlawful combatants and are legitimate military targets.

### Is Targeted Killing Legal?

Many legal experts around the world have debated the issue of state use of force against non-state actors or transnational terrorists. It is apparent that using this relatively new type of warfare, RPVs to destroy Al-Qaeda targets, does not conform to the definition of “use of force” under the existing system of international law.<sup>16</sup>

“The case for targeted killing must demonstrate that the United States is authorized to use force against terrorists in compliance with the law of conflict management, or *jus ad bellum*, and that the manner in which targeted killing are executed complies with the law on the conduct of war or *jus in bello*.”<sup>17</sup> Three days

following the horrific attacks by Al-Qaeda on September 11, 2001, the United States Congress passed legislation, Senate Joint Resolution 23 (S.J Res. 23), authorizing the President to “use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons.....”<sup>18</sup> The United States continues to operate under this joint resolution today, giving the domestic legal high ground to destroy the organization (Al-Qaeda), or person (Osama Bin Laden), linked to the September 11, 2001 attacks on the United States. The Authorization of Use of Force (AUMF) domestic law only applies to Al-Qaeda and its associates, not other criminal terrorist organizations around the globe.

Under International law, the United States can legally target members of Al-Qaeda under United Nations Charter, Article 51. The Article states, “Nothing in the present Charter shall impair the inherent right to individual or collective self-defense if an armed attack occurs against a Member of the United Nations...”<sup>19</sup> As a member of the United Nations, UN Charter, Article 51 allows the United States to defend itself and its people against Al-Qaeda in response to the complex and horrific attack in September 2001. The strikes are *ad bellum* permissible because they constitute a justified use of self-defense force against Al-Qaeda. “Permissible self-defense targeting can occur outside an actual theater of war in time of relative peace because there are no geographic limits.”<sup>20</sup> This bears mentioning due to the armed conflict between the United States and Al-Qaeda. In this light, International humanitarian law permits targeted killing of persons actively participating in hostilities.<sup>21</sup>

Considerable attention has been drawn to the United States policy of attacking Al-Qaeda within sovereign states like Yemen, Pakistan, and Somali which are not in conflict with the United States but which Al-Qaeda uses as a base of operations. Article 2(4) of the United Nation Charter states, “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”<sup>22</sup> The one exception to Article 2(4) is a state’s inherent right to self-defense. This is overridden by Article 51, which allows self-defense targeting directed towards select imminent, high threat Al-Qaeda targets.

Targeted killing does not violate sovereignty under three circumstances. First, if State A is responsible for an armed attack against State B, then State B has the right under international law to use force in self-defense. Second, if State A gives consent to State B to conduct the RPV attack, then respect for State A’s sovereignty is clearly demonstrated. Lastly, if State A is unwilling or unable to stop attacks from Al-Qaeda operatives that operate from its territory, then State B is permitted to use force in self-defense under Article 51.<sup>23</sup>

An example of the third scenario, where Al-Qaeda operates from the territory of a non-belligerent or possibly even friendly state, is Pakistan where America’s Pakistani friends and allies are unable to control terrorist activities emanating from certain regions within its borders. Top Al-Qaeda leader Ilyas Kashmiri continued to plan attacks from this sovereign state and was thought to be the lead officer to replace Osama bin Laden. Serving as a member of Al-Qaeda’s external network, Kashmiri was assigned to strike at targets in the West. “In January 2010, a U.S. federal grand jury indicted Kashmiri for



plotting to attack the Jyllands-Posten newspaper in Denmark for publishing cartoons of the Prophet Mohammed.”<sup>24</sup> On June 3, 2011, his presence in South Waziristan was confirmed and the United States launched an RPV to destroy the compound in which he was located. Kashmiri was killed along with nine other members of Al-Qaeda as a result of this Predator strike.<sup>25</sup> This strike is an example of an RPV attack conducted within the international law of war under UN Article 51. It also complies with the domestic law Authorization for Use of Military Force due to the very nature of this threat to the United States, as well as Pakistan’s inability to control the terrain in which he had sanctuary.

#### Additional Legal Considerations

*Distinction, proportionality and reasonable necessity* are three principles that govern Law of Armed Conflict (LOAC). These principles must be considered to sufficiently incorporate drone strikes into the overall strategy. When targeting an unlawful combatant, the state must still adhere to these principles that are embedded in the law of war. Each principle plays a dynamic role when deciding “when,” “what,” and “whom” to strike. The state’s actions are judged critically by the international community on case by case bases.

The term *distinction* refers to the ability to determine the difference between legitimate targets and protected persons. Distinction requires that combatants only engage legitimate military targets. International law prohibits the use of all weapons that indiscriminately affect both the military and civilian population. John Brennan, the White House counter-terrorism adviser, publicly stated that “the unprecedented ability of remotely piloted aircraft to precisely target a military object, while minimizing collateral damage, one could argue that never before has there been a weapon that allows us to

distinguish more effectively between an Al-Qaeda terrorist and innocent civilians.”<sup>26</sup> In an attempt to reduce civilian casualties, there are established procedures in place to positively identify targets within an objective area and establish a “pattern of life” to determine what innocent civilians may be at risk near the target area.

*Proportionality* under *jus in bello*, or law in war, is another consideration when deciding to execute these types of strikes. This proportionality condition is included in Additional Protocol I to the Geneva Conventions, which forbids attacks “which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.”<sup>27</sup> The principle of proportionality as it relates to drone strikes requires that actions be proportional to the ends or goals they seek. Any kinetic strike will likely be destructive to some level, but it must restrain the amount of force used to the level suitable to achieving the desired goal. It is important to understand that International law does not forbid civilian casualties, “but instead requires that targeting decisions in individual military operations must avoid civilian casualties that are excessive in relation to the anticipated military advantage.”<sup>28</sup> The RPV is one of the best tools available to destroy Al-Qaeda threats due to its precision, laser focused ordinance that can be adapted to avoid harming non-combatants.<sup>29</sup> Every RPV strike must go through a strategic decision making process, and in some cases to the level of the President of the United States.

The final principle to consider is that of *reasonable necessity*. Under this principle the law of armed conflict requires that, before launching an attack, the military must first prove that killing the target is the last resort. The military must also prove

there is not a reasonable possibility of capturing them before a strike. In some of the most remote, ungoverned regions of Pakistan and Yemen, Al-Qaeda or its associated forces operate freely without fear of being captured. Every situation is unique, but this is an example of when it could be necessary for the United States to conduct an RPV strike, based on enemy personality, location and timing. Remotely Piloted Vehicles, compared to traditional methods, are a more intelligent choice. Mr. John Brennan states, “An RPV can be a wise choice because of geography, with their ability to fly hundreds of miles over the most treacherous terrain, strike their targets with astonishing precision and return to base.”<sup>30</sup> RPVs should always be considered during times when windows of opportunity can close rapidly, allowing limited time to act.<sup>31</sup> Each operation must undergo its own cost benefit analysis.

#### Targeted Killing or Assassination

When examining the execution of these attacks under *jus in bello*, the United States must still comply with the law on the conduct of war. Target killing is often confused with the act of peacetime assassinations. The United States has banned assassinations and condemns them as an instrument of American policy.<sup>32</sup> In 1976, President Ford issued Executive order 11905 (currently Executive Order 12333) stating, “No employee of the United States Government shall engage in, or conspire to engage in, political assassination.”<sup>33</sup> Assassination is a killing conducted against an individual for purely political or ideological reasons. In contrast, targeted killing is conducted against an individual without regard for politics or ideology, but rather exclusively for reasons of state self defense.<sup>34</sup>

## Is Targeted Killing Moral?

Even if an action is deemed legal, United States policy makers must also question if it is moral. The United States is committed to maintaining the highest standards and reputation as a global leader. Adherence to commonly accepted and agreed upon moral standards is essential to gain domestic and international support for the use of RPVs. The question must be answer to ensure the United States is always seen as “just” and its policy seen as legitimate.

The issue is whether or not targeted killings are morally acceptable given the method and possibility of unintended results in today’s operational environment. Opponents of targeted killing argue that striking individuals using these “killer robots” not only kills the terrorist, but also innocent civilians, as well as extensive collateral damage. Recently, there has been a change in terminology from Unmanned Arial Vehicles (UAV) to Remotely Piloted Vehicles (RPV). This change in terminology clarifies that these aircraft are not out of control, but absolutely in control by humans. “Weapon specialists, along with some moral philosophers believe RPVs offer marked moral advantages over almost any other tool of warfare.”<sup>35</sup> RPV operators have the ability to identity a terrorist, fly over a target site for days if required, and strike when the time is right. This avoids unnecessary casualties and reduces collateral damage.<sup>36</sup>

Four recent studies of United States RPV civilian deaths in Pakistan estimate that the proportion of civilian victims is between 4 percent and 20 percent.<sup>37</sup> “When the Pakistani Army went after militants in the tribal area on the ground, civilians amounted to 46 percent of those killed.”<sup>38</sup> Another interesting fact found in this study is that military conflicts over the last 20 years resulted in civilian death totals ranging from 33 percent to more than 80 percent. In the first seven months of 2012, of the 152 terrorists

targeted by RPVs, only three civilians were killed.<sup>39</sup> The conclusion that can be decisively drawn from this data is that the use of RPVs saves innocent lives when compared to other means.

### Feasibility, Acceptability, and Suitability (FAS) of Targeted Killing

Applying the FAS principles to the Remotely Piloted Vehicles program will enable policy decision makers to examine if this is viable option for fighting and deterring future armed conflicts and combatants.

#### Feasibility

Feasibility tests resources or means. Does the United States have the means at hand or are they reasonably available to sufficiently execute the proposed concept?<sup>40</sup> Although the exact number and types of RPVs is unknown, official documents confirm that the United States has more than 7000 RPVs.<sup>41</sup> The U.S. Defense Department is fully committed to this program and plans to spend approximately \$31 billion to adequately fund this program through 2015.<sup>42</sup> Another consideration is geographic coverage and reach. By any measure this tool is a feasible choice because the United States currently has the capability to strike the most demanding Al-Qaeda safe havens around the globe.

Another test of feasibility is the relative unavailability of other means of attacking Al-Qaeda fighters. The lawless Federally Administered Tribal Areas (FATA) region is very difficult to access and any ground operations could result in missed high value targets due to the very nature of ground movement. In turn, a higher friendly causality rate could result when attempting to capture fighters through the use of ground troops.<sup>43</sup> Each target must be fully planned and executed so that the benefits outweigh the costs.

## Acceptability

The concept of acceptability varies in the international arena due to diverse cultures and norms that define what is acceptable. The United States application of “acceptability” takes into consideration the norms of the military, government, and people.<sup>44</sup> Although targeted killing does have the necessary constituent support, and it is a legal form of warfare, some International leaders on the world stage argue that targeted killing does not comply with just war theory and runs counter balance in combating terrorism.

Some claim that killing innocent civilians and causing extensive collateral damage associated with RPV strikes, violates principles of just war theory. There are many examples where the number of civilian deaths appeared to be high. “Some official Pakistani sources claim that seven hundred innocents were killed in 2009 alone, while U.S. government sources claim that fewer than thirty civilians were killed from May 2008 to May 2010.”<sup>45</sup> Although the numbers of civilians in almost every case can be disputed, the position of the United States needs to be open with a strategic informational campaign to explain its *just* actions. The risk of harming innocent civilians can be mitigated by using better intelligence, thereby enhancing the acceptability of targeted killing by RPV.

Enhanced intelligence efforts can reduce the likelihood of a “bad strike” as well as ensure target identification and discrimination. A strict approval process with clear release authorities at the strategic levels will make certain it is in our national interest to strike. Using this process will facilitate senior political and military leaders’ ability to mitigate potential ramifications and respond to questions posed by the international community.

Another argument against the acceptability of RPV strikes is it creates new enemies who would not have otherwise engaged in acts of terrorism. Does this policy put the United States in increased danger by creating more terrorists than the number of terrorists being removed off the world stage? Although this topic is discussed at the highest political levels, it is very difficult to ascertain the true numbers due to the complexity of the environment and lack of quantifiable data.

One might see an increase in sympathetic supporters for terrorists following RPV attacks of high payoff targets. These sympathizers do not have the means or ways to pose more of a danger than that of the intended target. RPV strikes are legally killing the imminent threat that is willing and capable of attacking Americans. During a successful RPV attack, an individual who has the capability and intent to cause harm is being destroyed at a potential cost of creating additional sympathetic supporters.

### Suitability

Suitability tests whether the RPV programs will successfully achieve the considered ends.<sup>46</sup> The question “Do Targeted Killings Work?” is a very difficult one to answer. Will targeted killings achieve the objectives of disrupting Al-Qaeda’s ability to plan future attacks and destroy key leaders? Just because a strike is effective with limited collateral damage, is it successful? Does striking a high value target in foreign land achieve the strategic ends? To answer these questions, one must look at it from a dual prong approach, the friendly approach and the approach of the enemy.

Israel demonstrated an effective use of the policy of targeted killing in its action against the terrorist group Hamas in Palestine. Even though drones were not used, a parallel can still be seen. By 2002, Hamas seemed to be conducting terrorist attacks in Israel free of threat, resulting in effective and deadly attacks. “Reports showed that by

the end of October 2005, Palestinians killed 1,074 Israelis and wounded 7,520.<sup>47</sup> Israel began an intensified targeted killing campaign, killing terrorist targets, resulting in an increase in public morale in Israel. The Israeli government was viewed as strong due to the successful targeted killings. These actions strengthened Israeli faith in the government, effectively countering one of the primary objectives of the terrorist. “The National Memorial Institute for the Prevention of Terrorism (MIPT) reports that in 2005, only 21 Israeli civilians died at the hands of Hamas—down from 67 in 2004, 45 in 2003, and 185 in 2002 and 75 in 2001.<sup>48</sup> The number of Hamas attacks which grew from 34 in 2001 to 179 in 2005 but were less effective on the people of Israel.”<sup>49</sup> Killing the leaders and taking away the proficient terrorists resulted in an overall reduction of terrorist effectiveness. In 2005, Hamas publicly stated that it would accept a “period of calm” because of the significant losses it was suffering among its senior leaders.<sup>50</sup> Israel remains an advocate of targeted killing in the face of many difficult challenges, and it seems to be working in their campaign against terror.

President Obama has also demonstrated the effective use of the drone. In his first four years in office, he authorized nearly four times the number of strikes in Pakistan as President Bush did during his eight years in office. “There have been approximately 295 strikes launched since 2009, killing somewhere between 1,489 and 2,297 militants.”<sup>51</sup> One would argue that this type of pressure is damaging Al-Qaeda ability to plan and implement future attacks at the senior level. Although it is very difficult to measure the long term effectiveness of these RPV attacks, there has not been a significant attack on U.S. soil since 9/11. The use of the RPV to strike Al-Qaeda



along with other elements of National Power is reducing their ability to have complete sanctuary in states like Yemen, Somalia, and Pakistan.

### Policy Recommendations

#### Maintain Strict Approval Process at the Highest Levels

The approval authority for targeted killing by drones must be reserved for our highest level of political and military leadership, preferably at the presidential level when attacking non-state actors outside a theater of war.<sup>52</sup> The president should create clear authority levels, so that when a target presents itself, the United States can act swiftly to destroy the threat. If, in fact, the approval and authority levels of such missions were reserved by the president himself, it would force strategic and comprehensive joint planning and ensure that national security principals coordinate before acting. This can prevent one national security leader below the level of the president, whether it is the Secretary of Defense, the Director of the Central Intelligence Agency (CIA), or a combatant commander, from acting independently. It would ensure the benefits of eliminating these targets would outweigh the domestic and international political and diplomatic fallout that could follow.

#### Enhance Legitimacy Through Transparency

America's decision making process needs to be communicated to the international community to ensure transparency and should conform to international norms and law whenever possible to gain broad approval and support. "The United States government along with the United Nations needs to develop clear, transparent, and legitimate measures for deciding when targeted killings are suitable."<sup>53</sup> For example, Al-Qaeda can be targeted under the authority of UN Charter 51, the inherent right to self-defense. The international and domestic policy makers need to review

drone policy frequently so as to improve situational awareness and incorporate lessons learned. It must be clear that we will only execute these strikes as a last resort, after all other measures and considerations have been exhausted and only if deemed legal, moral, feasible, acceptable and suitable.

#### Develop Common International Standards for the use of RPVs

The United States needs to maintain high standards and inform the international community when and under what circumstances to conduct RPV strikes. Other countries around the globe are in the process of acquiring their own remotely piloted programs and are watching the United States very meticulously. The United States government is leading the international community with these weapon technologies and operating procedures. On May 1, 2012, Mr. John Brennan stated, “If the United States wants other nations to adhere to high and rigorous standards for their use, then we must do so as well.”<sup>54</sup>

#### Revise the Role of CIA

The Central Intelligence Agency, which carries the status of non-combatant, will only bring up additional legal and moral issues if it continues to act as an “action arm” for using RPVs.<sup>55</sup> The Nation needs a national level discussion if armed drones are going to be a tool available in the CIA inventory. There is no doubt that the CIA is an integral part in targeted killings today in addition to their established and accepted role in gathering and analyzing actionable intelligence. The CIA should continue to invest in its intelligence gathering technology but serious consideration should be given to preventing them from engaging in direct action or killing our enemies due to their non-combatant status. Enhancements in CIA intelligence allow the CIA to identify imminent Al-Qaeda threats, improving the military’s ability to kill with precision and accuracy.

## Establish Procedures for Strikes in Sovereign States

The domestic and international arena needs to address strikes against non-state actors (Al-Qaeda) in sovereign states. Respecting international laws of war, rules, and state sovereignty is covered under Article 2 (Section 4) of the UN Charter. The state leadership where the strike is going to take place should grant approval before execution, except in extreme emergencies. “Changes in U.S. drone policy included providing the State Department greater influence in targeting decision, giving Pakistani leaders forewarning about certain strikes, and suspending drone operations when Pakistani officials visit the United States.”<sup>56</sup> In a statement made to the *Washington Post* in an interview published September 29, 2012, President Abed Rabbo Mansour Hadi of Yemen said he “personally approved every U.S. drone strike in his country.”<sup>57</sup> All exceptions will need approval by the President due to the nature of sensitivity and will also need to be briefed to Congress as soon as feasibly possible. This briefing to Congress is twofold, it will ensure that they understand the strategic importance of this policy as well as maintain public support for this program.

## Invest in Technology

The United States must continue to invest in and be on the leading edge of technology, developing weapons with limited-impact warheads that will reduce the chances of error. Limiting collateral damage and the potential of killing of innocent civilians must be considered in every strike. The major argument from those who disapprove of targeted killings is that, in their view, it not only kills the intended target, but innocent non-combatants as well. The international community must understand that RPVs are being controlled by qualified and experienced pilots, and that no weapon system is perfect-- especially as potential Al-Qaeda targets seek sanctuary in populated

areas. Death or serious injury to non-combatants will be minimized through world class, state of the art weapon technology and increased intelligence.

### Conclusion

The United States should continue to use the remotely piloted vehicles as an instrument for targeted killing against Al-Qaeda in the future with additional considerations. The fight against Al-Qaeda is far from over and it would be a grave mistake to believe Al-Qaeda is not planning to attack the United States in the future. The RPV or drone will remain at the forefront of international debates. The United States must continue to communicate our decision criteria and methods for executing RPV strikes in support of our national interest. Each strike must be treated as a single event and adhere to the highest possible standards and processes. Each must be judged legal, moral, feasible, acceptable and suitable. Distinction, proportionality and reasonable necessity, the three principles that govern Law of Armed Conflict, must also be incorporated into the overall strategy. The United States must respect State sovereignty while reserving the right to go after Al-Qaeda and other terrorist groups from whatever bases they operate. Whenever possible the United States should gain the consent and support of such states while being prepared to act independently when the situation demands it. The use of the Remotely Piloted Vehicles is a tool that the United States must continue to use to destroy this global threat.

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